

May 3, 2001

Docket Nos. FMCSA-98-4334 and FMCSA-98-3637  
(formerly FHWA-98-4334 and FHWA-98-3637)  
Dockets Management Facility  
Room PL-401  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590

**Qualification of Drivers; Exemption Applications; Vision  
66 FR 17994, Apr. 4, 2001**

Advocates for Highway and Auto Safety (Advocates) files these comments regarding the Federal Motor Carrier Safety Administration's (FMCSA) notice announcing the agency decision to renew exemptions from the federal vision requirement, 49 Code of Federal Regulations 391.41(b)(10) for thirteen applicants.

Advocates objects to the issuance of the FMCSA final decision as a *fait accompli* without providing prior notice and opportunity for public comment. The agency has summarily renewed the exemptions, effective April 5, 2001, without any opportunity for public comment prior to the decision to renew. This procedure violates due process considerations and the dictates of the Administrative Procedure Act, 5 U.S.C. § 553 *et seq.* Renewals of exemptions should be subject to the same notice and comment process as required for the initial determination to grant the exemption. Nothing in the exemption statute, 49 U.S.C. § 31315, states anything to the contrary.

In addition, the notice provides only a summary statement that the applicants qualify for exemption renewal. The agency makes specific reference only to the fact that the vision impairment of the applicants remain stable. 66 FR 17994, 17995. The agency concludes from a review of the applicants' driving records that "each applicant continues to meet the vision exemption standards." *Id.* However, the agency does not provide that information to the public. In fact, the agency does not present for public review any of the information the agency relied on in making its determination. Neither does the agency provide any follow up information similar to the information presented to the public in the initial notice that accompanied the agency's initial determinations to grant the exemptions of the 13 applicants. No mention is made of driving mileage accrued during the two years of the prior exemption nor any information regarding the accident and citation experience of the applicants. Nowhere does the agency state that the 13 drivers were involved in accidents or received citations for moving violations. Even if these events do not disqualify the drivers from consideration of a renewal of their exemption, the agency should provide the public with the same record and information it reviewed in coming to its decision that the exemption of each driver should be renewed.

Moreover, in making its determination to renew the 13 exemptions for another two year period the FMCSA heavily relies on the correctness of its previous determination to grant the original two year exemption. In responding to Advocates' criticism of the agency's peremptory procedures, the agency states that it performed a careful review of each original exemption request and that those notices, published two years ago, set forth the qualifications of each applicant. The agency refers the public to the prior determination for information about each applicant. 66 FR 17995. This entirely misses the point that, under the statute, the renewal for an additional two year exemption period is an independent determination that must be made at the time a renewal is requested and based on the extant facts at that point in time. The agency cannot rely on two year old information, much of which was self-reported, but must fully update the facts and information to ensure that a credible new safety determination is based on recent facts and events. Otherwise, the agency is merely rubber stamping its prior determination without scrutiny, review or safety analysis.

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